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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re VALERIE M., A Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

H027320

Plaintiff and Respondent,

(Santa Clara County
Superior Court
No. J127514)

v.

VALERIE M.,

Defendant and Appellant.

_____ /

Valerie M., a minor, appeals from the orders of the juvenile court finding her to be a ward of the court and placing her on probation. (Welf. & Inst. Code, § 602.) She contends the probation conditions that she not possess a dangerous or deadly weapon and not be in a place where such weapons exist must be modified to include a knowledge requirement. We agree.

I. Procedural Background

After a contested jurisdictional hearing, the juvenile court found true allegations in a juvenile wardship petition that Valerie had committed a two felony counts of attempted carjacking (Pen. Code, §§ 664/215) and one misdemeanor

count of battery at school (Pen. Code, §§ 242, 243.2). At the dispositional hearing, the juvenile court declared Valerie a ward of the court and placed her on probation with several conditions.

II. Facts

On October 3, 2003, Valerie was in a high school class when she called another student, Estela M., “scrapa” (trash), which refers to a “Surenos” gang member. Estela then called Valerie names. Valerie hit Estela in the face with a closed fist. Estela bled from her nose and mouth.

On January 12, 2004, Valerie and two female companions forced Thuy Nguyen to stop her van. When Nguyen asked what they wanted, one girl asked for directions. Two of the girls entered the van, one in front and one in back. One waved to the third girl, who got in and sat behind Nguyen. Nguyen followed their orders not to talk and to drive them around. She then was told to let one of the girls drive. When the girl in front stepped on the brake, Nguyen stopped the van, screamed, and said she would give them her van. At some point, a girl in back put her hand near Nguyen’s neck and told her not to talk. Nguyen parked, left the van, and screamed that the girls were trying to rob her. Two girls fled in one direction while the third ran across the street to a market. Nguyen called the police.

Later that day, Beatrice Garcia was stopped at a stop sign when she noticed Valerie and two female companions at the corner. Valerie walked in front of Garcia’s car and raised her hand, indicating that Garcia should stop. When Garcia rolled down her window to ask what was happening, Valerie grabbed the driver’s door and told Garcia to get out. Another girl opened the back door and said, “Get out of the car. We need the car.” Garcia stepped on the gas and took off.

Valerie was detained at a nearby market, where Garcia identified her as one of the girls who tried to take her car. One of Valerie’s companions, Carmen V.,

also was detained at the market. When the police searched Carmen, they found a razor blade in her possession.

After Valerie was admonished pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, she told police she and her companions tried to get a ride from Garcia to get away from “scrapas,” but she later said they were not being chased. Valerie admitted she entered Nguyen’s van and then fled after Nguyen left the van.

Valerie testified at the contested jurisdictional hearing. She said she acted in self-defense during her fight with Estela. With regard to the Nguyen carjacking, Valerie said she, Carmen and Kimberly, were planning to walk to Silver Creek High School when her companions got in front of a van. Valerie said she only entered the van because she felt threatened by Carmen since Carmen had a razor blade in her hand as she yelled at Valerie to get in. Valerie sat behind the driver and said nothing. When Nguyen left the van, Valerie got out and tried to get away from her companions. She started walking home, but Carmen and Kimberly followed her. Valerie said when Carmen and Kimberly tried to steal another car, Carmen ran in front of the car and Kimberly opened the passenger door and told the driver to get out. Valerie said she was on the corner, and she walked away.

III. Discussion

Among the conditions of probation, the juvenile court ordered Valerie not to “own, use, or possess any dangerous or deadly weapons” and not to “remain in any building, vehicle, or the presence of any person where dangerous or deadly weapons exist.” Valerie contends these conditions “must be modified to provide that [she] is precluded only from knowingly possessing a weapon or knowingly being in a place where dangerous weapons exist.”

Although Valerie did not object to the condition of probation at the time it was imposed, the People do not rely upon waiver. They simply note that the waiver issue is “pending in our Supreme Court in *In re Sheena K.* (2004) 116 Cal.App.4th 436, rev. granted June 9, 2004, in S123980.” In any event, Valerie also raises a claim of ineffective assistance of counsel in that her counsel in juvenile court failed to object to the condition in question. Accordingly, we consider the merits of Valerie’s challenge to the probation condition.

Citing *People ex rel Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1117, a case that involved a vagueness challenge to the provisions against individuals of a criminal street gang, the People contend “the contention is meritless because a knowledge requirement is implied.”

However, in *People v. Garcia* (1993) 19 Cal.App.4th 97, the court considered the precise issue before us, namely whether the knowledge requirement of a probation condition should be implied. The *Garcia* court stated that “the rule that probation conditions that implicate constitutional rights must be narrowly drawn, and the importance of constitutional rights, lead us to the conclusion that this factor should not be left to implication.” (*Id.* at pp. 102-103.) The *Garcia* court modified a condition of probation prohibiting an adult probationer from associating with felons, ex-felons, and users and possessors of narcotics “to provide that appellant is not to associate with persons he knows to be users or sellers of narcotics, felons or ex-felons.” (*Id.* at p. 102.) We find the reasoning in *Garcia* persuasive.

In light of *Garcia*, we believe an objection to imposition of the weapon probation conditions without a knowledge requirement was likely to be successful and that a reasonably competent trial counsel should have raised such an objection. (*People v. Price* (1991) 1 Cal.4th 324, 440.)

We conclude the probation conditions must be modified as follows: “Do not knowingly use, or possess any dangerous or deadly weapons” and “Do not knowingly remain in any building, vehicle, or the presence of any person where dangerous or deadly weapons exist.”

III. Disposition

The probation conditions at issue are modified to state the following: “Do not knowingly use, or possess any dangerous or deadly weapons” and “Do not knowingly remain in any building, vehicle, or the presence of any person where dangerous or deadly weapons exist.” As so modified, the dispositional order in this case is affirmed.

Mihara, J.

We concur:

Rushing, P.J.

Elia, J.